

REMARKS

Claims 1-2 and 5-12 are pending in the present application. Claim 1 has been amended, and claims 3-4 have been canceled. No new matter has been added by way of the amendment to claim 1, because the amendment is made to merely incorporate the subject matter of canceled claim 4. Further, the present specification at page 9, lines 12-14 supports this amendment.

Based upon the above considerations, entry of the present amendment is respectfully requested.

Applicant's previous remarks of April 7, 2003, have been rendered moot in view of the new ground(s) of rejection. In view of the following remarks, Applicant respectfully requests that the Examiner withdraw all rejections and allow the currently pending claims.

Issues of Obviousness-type Double Patenting

Claims 1 and 3-5 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 4 of U.S. Patent No. 6,571,802 (hereinafter referred to as "the '802 patent"). Further, claims 2 and 7-12 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 4 of the '802 patent in view of Tsugaya et al. (U.S. Patent No. 5,711,322; hereinafter "Tsugaya '322"). In addition, claim 6 stands rejected under the judicially created

doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 4 of the '802 patent in view of Barkowsky *et al.* (U.S. Patent No. 5,744,523; hereinafter "Barkowsky '523"). Applicant respectfully traverses.

A Terminal Disclaimer is being filed concurrently with this Amendment, rendering moot all of these obviousness-type double patenting rejections. Thus, Applicant respectfully requests the Examiner to withdraw all of these rejections.

Issues Under 35 U.S.C. § 103(a)

Claims 1-3, 5 and 7-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tsugaya '322. Also, claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Tsugaya '322 in view of Barkowsky '523. Applicant respectfully traverses.

Applicant respectfully submits that the instantly pending claims are patentably distinct over the cited references. However, the stated rejections are rendered moot.

Claim 4 of this application is free of prior art. Claim 1 incorporates the subject matter of claim 4 (now canceled). Claims 2 and 5-12 ultimately depend on claim 1. Thus, Applicant respectfully submits that all presently pending claims are in condition for allowance. Accordingly, reconsideration and withdrawal of these rejections is respectfully requested.

Appl. No. 09/941,839
Art Unit 1731
Reply to Office Action of June 12, 2003

Conclusion

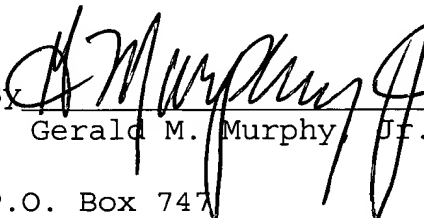
A full and complete response has been made to the Office Action, and Applicant has taken substantial steps in an effort to advance prosecution. Applicant respectfully requests that a timely Notice of Allowance be issued in the present application.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Eugene T. Perez (Reg. No. 48,501) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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Attachment: Terminal Disclaimer